

## NOTICE OF INTENT

### Department of Insurance

### Office of the Commissioner

Regulation 31—Holding Company

(LAC 37:XIII.Chapter 1)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 31—Holding Company. The purpose of the amendment to Regulation 31 is to add provisions for the continuity of essential services and functions provided by affiliates when an insurer is placed into receivership as provided in Act 713 of the 2022 Regular Legislative Session and to implement the revisions to the NAIC Insurance Holding Company System Model Regulation (#450) related to transactions subject to notice regarding agreements for cost sharing services and management services and group capital calculations.

### Title 37

### INSURANCE

### Part XIII. Regulations

#### Chapter 1. Regulation Number 31—Holding Company

#### §128. Group Capital Calculation

A. The lead state commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000;
2. has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
3. has no banking, depository or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;
4. the holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and
5. the non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state commissioner has the discretion to accept in lieu of the group capital calculation a limited group capital filing if:

1. the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than \$1,000,000,000; and all of the following additional

criteria are met:

- a. has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;
- b. does not include a banking, depository or other financial entity that is subject to an identified regulatory capital framework; and
- c. the holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state commissioner and the non-insurers within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to Subsection A and B, the lead state commissioner may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in R.S. 22:611 *et seq.* and R.S. 22:631 *et seq.* or a similar standard for a non-U.S. insurer; or
2. any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in §1305 and §1307 of Regulation 43; or
3. any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state commissioner based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. A non-U.S. jurisdiction is considered to “recognize and accept” the group capital calculation if it satisfies the following criteria:

1. with respect to an insurance holding company system described in R.S. 22:691.6(M)(2)(d):
  - a. the non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or
  - b. where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in Subsection D.1.a.
2. the non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be

provided to the lead state commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such jurisdiction, including but not limited to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commissioner shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

E. A list of non-U.S. jurisdictions that “recognize and accept” the group capital calculation will be published through the NAIC Committee Process:

1. a list of jurisdictions that “recognize and accept” the group capital calculation pursuant to R.S. 22:691.6(M)(2)(d), is published through the NAIC Committee Process to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under R.S. 22:691.6(M)(2)(d). To assist with a determination under R.S. 22:691.6(M)(3), the list will also identify whether a jurisdiction that is exempted under either R.S. 22:691.6(M)(2)(c) or (d) requires a group capital filing for any U.S. based insurance group’s operations in that non-U.S. jurisdiction.

2. for a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of Subsection D.1.b will serve as support for recommendation to be published as a jurisdiction that “recognizes and accepts” the group capital calculation through the NAIC Committee Process.

3. if the lead state commissioner makes a determination pursuant to R.S. 22:691.6(M)(2)(d) that differs from the NAIC List, the lead state commissioner shall provide thoroughly documented justification to the NAIC and other states.

4. upon determination by the lead state commissioner that a non-U.S. jurisdiction no longer meets one or more of the requirements to “recognize and accept” the group capital calculation, the lead state commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that “recognize and accepts” the group capital calculation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:611 *et seq.*, R.S. 22:631 *et seq.*, and R.S. 22:691.1-691.27.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1298 (July 2015), amended LR

### **§129. Transactions Subject to Prior Notice—Notice Filing**

A. ...

B. Agreements for cost sharing services and management services shall at a minimum and as applicable:

1. identify the person providing services and the nature of such services;
2. set forth the methods to allocate costs;
3. require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;
4. prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;
5. state that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;
6. define records and data of the insurer to include all records and data developed or maintained under

or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate;

7. specify that all records and data of the insurer are and remain the property of the insurer and;

- a. are subject to control of the insurer;
- b. are identifiable; and
- c. are segregated from all other persons' records and data or are readily capable of segregation at no additional cost to the insurer;

8. state that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

9. include standards for termination of the agreement with and without cause;

10. include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in §129.B.11 through §129.B.15 of this regulation;

11. specify that, if the insurer is placed in supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737:

- a. all of the rights of the insurer under the agreement extend to the receiver or commissioner to the extent permitted by R.S. 22:691.7; and

- b. all records and data of the insurer shall be identifiable and segregated from all other persons' records and data or readily capable of segregation at no additional cost to the receiver or the commissioner;

- c. a complete set of records and data of the insurer will immediately be made available to the receiver or the commissioner, shall be made available in a usable format and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request, and the cost to transfer data to the receiver or the commissioner shall be fair and reasonable; and

- d. the affiliated person(s) will make available all employees essential to the operations of the insurer and the services associated therewith for the immediate continued performance of the essential services ordered or directed by the receiver or commissioner;

12. specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737;

13. specify that the affiliate will provide the essential services for a minimum period of time after termination of the agreement, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, as ordered or directed by the receiver or commissioner. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner or supervising court;

14. specify that the affiliate will continue to maintain any systems, programs, or other infrastructure

notwithstanding supervision, a seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, and will make them available to the receiver or commissioner as ordered or directed by the receiver or commissioner for so long as the affiliate continues to receive timely payment for post-receivership services rendered, and unless released by the receiver, commissioner, or supervising court; and

15. specify that, in furtherance of the cooperation between the receiver and the affected guaranty association(s) and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship or receivership pursuant to R.S. 22:2001-2044 and R.S. 22:731-737, and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under §129.B.11 through §129.B.14 of this regulation will extend to such guaranty association(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:691.1-691.27, R.S. 22:731-737, and R.S. 22:2001-2044.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 18:274 (March 1992), amended LR 19:501 (April 1993), amended by the Office of the Commissioner, LR 41:1298 (July 2015), amended LR

### **Family Impact Statement**

1. Describe the Effect of the Proposed Regulation on the Stability of the Family. The proposed regulation should have no measurable impact upon the stability of the family.

2. Describe the Effect of the Proposed Regulation on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. The proposed regulation should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the Effect of the Proposed Regulation on the Functioning of the Family. The proposed regulation should have no direct impact upon the functioning of the family.

4. Describe the Effect of the Proposed Regulation on Family Earnings and Budget. The proposed regulation should have no direct impact upon family earnings and budget.

5. Describe the Effect of the Proposed Regulation on the Behavior and Personal Responsibility of Children. The proposed regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the Effect of the Proposed Regulation on the Ability of the Family or a Local Government to Perform the Function as Contained in the Rule. The proposed regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

### **Poverty Impact Statement**

1. Describe the Effect on Household Income, Assets, and Financial Security. The proposed regulation should have no effect on household income assets and financial security.

2. Describe the Effect on Early Childhood Development and Preschool through Postsecondary Education Development. The proposed regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the Effect on Employment and Workforce Development. The proposed regulation should have no effect on employment and workforce development.

4. Describe the Effect on Taxes and Tax Credits. The proposed regulation should have no effect on taxes and tax credits.

5. Describe the Effect on Child and Dependent Care, Housing, Health Care, Nutrition, Transportation and Utilities Assistance. The proposed regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and Estimate of the Number of the Small Businesses Subject to the Proposed Rule. The proposed regulation should have no measurable impact upon small businesses.

2. The Projected Reporting, Record Keeping, and Other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed regulation should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed regulation should have no measurable impact upon small businesses.

4. Describe any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed regulation should have no measurable impact on small businesses; therefore, there is no less intrusive or less costly alternative method of achieving the purpose of the proposed regulation.

#### **Provider Impact Statement**

1. Describe the Effect on the Staffing Level Requirements or Qualifications Required to Provide the Same Level of Service. The proposed regulation will have no effect.

2. The Total Direct and Indirect Effect on the Cost to the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

3. The Overall Effect on the Ability of the Provider to Provide the Same Level of Service. The proposed regulation will have no effect.

#### **Public Comments**

Interested persons who wish to make comments may do so by writing to Jennifer Land, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, by faxing comments to (225) 342-1632, or electronically at [regulations@ldi.la.gov](mailto:regulations@ldi.la.gov). Comments will be accepted through the close of business, 4:30 p.m., January 9, 2023.

James J. Donelon  
Commissioner

#### **Fiscal and Economic Impact Statement**

1. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rule is not anticipated to result in implementation costs or savings to the state or local governmental units. The proposed rule is being amended to add the provisions from Act 713 of the 2022 Regular Legislative Session

and to implement the revisions to the NAIC Insurance Holding Company System Model Regulation. These provisions from Act 713 are related to the continuity of essential services and functions provided by affiliates when an insurer is placed into receivership. The NAIC model revisions are related to group capital calculations and transactions subject to notice regarding agreements for cost-sharing and management services.

2. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rule will have no impact on state or local governmental revenues.

3. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS. (Summary)

The proposed rule is not anticipated to have any costs and/or economic benefits to directly affected persons, small businesses, or non-governmental groups. The rule is being amended to comply with NAIC standards and to implement provisions from Act 713 of the 2022 Regular Legislative Session.

4. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT. (Summary)

The proposed rule will have no impact upon competition and employment in the state.